*United States Government*
*National Labor Relations Board*
**OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: March 25, 1996

TO : Veronica I. Clements, Acting Regional Director
Region 27

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Teamsters, Local 537 (Praxair, Inc.)
Case 27-CB-3546

This case was submitted for advice on the lawfulness of a union-security clause, and also whether under Beck and California Saw,[1] the Union unlawfully charged for non-representational expenses and also unlawfully failed to:

1. advise unit employees of their rights to become nonmembers;
2. provide a timely initial Beck notice;
3. mail its Beck financial information to an objector;
4. provide an accounting of the International's representational and non-representational expenses.

On April 13, 1995, the parties agreed to a new bargaining agreement which was their first agreement containing a union-security clause. At a Union meeting on April 23, the agreement was ratified to become effective retroactively on April 1, 1995. At the time of contract ratification, Charging Party Ashby was the only nonmember among the represented 22 driver and mechanic employees.

The new union-security clause clearly states: "Employees shall have the right to join, not join, maintain or drop their membership in the Local Union as they see fit." The clause further states that all employees received contract benefits and therefore each employee would be required to "pay his own way and assume his fair share..." The clause states that as a condition of employment, all employees would be required to pay money to the Union for "dealing with the Employee Labor Management issues." Finally, the agreement provides "For all employees the payment shall start thirty-one days following the date of employment." The Union asserts that around the time of the April 23 ratification meeting, it distributed to all

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[1] CWA v. Beck, 487 U.S. 735 (1988); California Saw & Knife Works 320 NLRB No. 11 (December 20, 1995).

employees copies of the proposed agreement containing the above union-security clause language.

Around mid-May, Charging Party Ashby had two conversations with the Union President. According to Ashby, he clearly indicated that he was not interested in becoming a member but would pay his fair share of the Union's costs to negotiate the new agreement. According to the Union President, Ashby never clearly stated he wouldn't join the Union. Instead, after the President told Ashby that the dues reduction for nonmembers was minimal, Ashby appeared to sound receptive to becoming a member.

On June 20, the Union mailed Ashby a letter as a follow up to the May conversations. The letter enclosed both dues deduction and membership forms "depending on whether [Ashby] wants to pay dues as a non-member or as a member." The following day, Ashby replied by letter to the Union by requesting "an itemized financial statement so that we can agree upon the proper amount used for collective bargaining representation."

On July 19, the Union mailed Ashby a letter stating that the Union itself had no nonrepresentational expenses. The Union stated that nonmember dues were $23.71/month which represented a reduction of 29 cents from regular monthly dues. The Union stated that this reduction was from the Union's per capita payment to the International who claimed that 29 cents represented its own nonrepresentational expenses.[2] The Union also stated that 30 cents of Ashby's nonmember dues represented life insurance premiums, and that he would not be charged that amount if he did not wish the insurance. Finally, the Union stated that Ashby would have to notify the Union annually of his nonmember objector status, and that Ashby could make an appointment to visit the Union to review its financial records to verify the Union's claimed representational expenses.

On August 12, Ashby notified the Union that he would be willing to escrow his monthly dues pending "mutually acceptable agreement" on what he should pay. On September 12, the Union declined Ashby's offer, stated that Ashby would be required to pay the $23.71/month nonmember dues, that he need not pay the 30 cents life insurance, and that the Union itself would hold those

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[2] Thus, the Union does not charge any nonmembers, whether they object or not, for nonrepresentational expenses included in the per capita payment it makes to the International.

dues in escrow. The Union renewed its offer for Ashby to visit the Union's offices to review financial records, and further stated that Ashby could challenge any expenses as nonrepresentational before an impartial arbitrator.

Finally, on October 18 the Union notified Ashby that it would request his discharge if within the next 60 days he didn't pay his nonmember dues for the three months of August, September and October. The Union has indicated, however, that it will not request Ashby's discharge pending resolution of the Beck issues in this case.

The Union has supplied the Region with the Union's most recent annual financial statements which were independently audited. These statements set forth the Union's major expenses describing them in terms sufficient to allow a determination of whether they include nonrepresentational expenditures. The only claimed representational expenditures that appear to be nonrepresentational are "Contributions" of $650 to various groups.

We conclude that the parties' union-security clause is lawful, and that the Union's treatment of Ashby as a Beck objector also is lawful, except that the Union was required to disclose the International's financial information because of the chargeable portion of Union dues which the Union forwarded to the International.

First, regarding the union-security clause, we recognize that the statutory proviso to Section 8(a)(3) allows a union-security clause to require membership only "on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later..." (emphasis added). The instant clause provides for "all employees" that payments shall start thirty-one days "following the date of employment". The clause thus omits the alternative for current employees, i.e., omits requiring payments for current employees to begin thirty-one days after the effective date of the clause.

The Board initially relied upon such an omission for current employees to find a union-security clause unlawful, even where such a clause had been lawfully applied allowing the thirty day grace period to current employees.[3] The Board later

[3] Krambo Food Stores, Inc., 98 NLRB 1320 (1952).

refused to find such a union-security clause unlawful in circumstances where the union had explained at the contract ratification meeting that current employees would in fact have a thirty day grace period.[4] Eventually, the Board adopted the views of the Third Circuit Court of Appeals which held that:

> the statutory requirement for the minimum joining period of 30 days following the effective date of a union-security agreement is but a temporary transitional provision which, although it must, of course, be read into every such agreement, need not necessarily be expressly included on pain of invalidating the entire union-security provision.[5]

In Whyte Manufacturing Co., Inc., 109 NLRB 1125, 1127 (1954) a Board majority found lawful a union-security clause which failed to provide a grace period for current employees. It cited the above Third Circuit decision and adopted its view stating: "Collective-bargaining contracts are 'practical working arrangements frequently drawn by laymen unschooled in the niceties of legal draftsmanship.'"[6]

In the instant case, the union-security clause in fact was applied to lawfully accord a thirty day grace period to nonmember Ashby. Accordingly, we conclude that such clause is not unlawful merely because of its technical failure to expressly provide for current employees during the transitional period after the clause's effective date.

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[4] Bath Iron Works Corp., 101 NLRB 849 (1952). Citing this decision, the Board then reversed its earlier position in Krambo and found that such union-security clause language is "ambiguous" subject to lawful clarification. See Krambo Food Stores, Inc., 106 NLRB 870 (1953).

[5] NLRB v. United Electrical Workers, Local 622, 203 F.2d 673, 676, 32 LRRM 2002 (3d Cir. 1953).

[6] Compare A. Sandler Co., 110 NLRB 738 (1954, applying Whyte Manufacturing and the Third Circuit decision, with The Steel Products Engineering Co., 116 NLRB 811 (1956), distinguishing Whyte where the clause in that case failed to provide any 30 day grace period.

Concerning the alleged violations of Beck, in California Saw, the recent Board case construing Beck, the Board held that the duty of fair representation requires that when or before a union seeks to enforce a union-security clause, it should inform the employee that he or she has the right to be a nonmember, and that nonmembers have the right:

> (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.[7]

In addition, if the employee chooses to object, the union must apprise the employee of "the percentage of the reduction, the basis for the calculation, and the right to challenge these figures."[8]

In the instant case, we conclude, in agreement with the Region, that the union-security clause in haec verba fully informs employees of their right under General Motors to become or not become union members.[9] Regarding the Union's failure to timely provide Beck notice to nonmember Ashby, we conclude that it would not effectuate the purposes and policies of the Act to proceed with this allegation. We have dismissed similar allegations where the union eventually did provide Beck information.[10] Here, the remedy for this allegation would be to provide a Beck notice which would be similar to the Union's July

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[7] California Saw, 320 NLRB No. 11, slip op. at 10.

[8] Id.

[9] NLRB v. General Motors, 373 U.S. 734 (1963). See also Paperworkers Local 1033 (Weyerhaeuser Paper), 320 NLRB No. 12 (1995).

[10] See, e.g., CWA Local 2001 (A T & T ), Case 9-CB-9139, Advice Memorandum dated June 27, 1995 and cases cited therein at note 3.

19 letter to Ashby. Therefore, this allegation should be dismissed on noneffectuation grounds.

Next we conclude that the Union adequately fulfilled its obligation to provide Ashby with the required Beck financial information after he objected by sending him the July 19th letter explaining nonchargeable amounts and offering him the opportunity to personally inspect the Union's financial records at its offices.[11] We recognize that unions normally mail Beck financial information directly to objectors. We would not argue, however, that the Union's offer here to the only nonmember objector in the entire unit to inspect the information at its offices was so obstructive, arbitrary or unreasonable as to have breached the duty of fair representation.

Neither the Board nor the courts have specifically addressed the issue of whether a union must mail a disclosure to objectors. As noted above, the Board in California Saw, slip op. at 10, merely stated that objectors "must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures."

In cases involving a union's obligation to furnish hiring hall applicants information as to hiring hall referrals, the Board has found that a union satisfied this obligation by providing the applicants access to the relevant documents at the union's hiring hall.[12] In Construction Employers Assn., the charging party and six other hiring hall applicants requested by letter that the union mail them specific, limited information as to hiring hall referrals and offered to pay a "reasonable cost for reproducing the information requested." The General Counsel did not allege that the union's failure to mail copies of this information to the applicants violated Section 8(b)(1)(A). Instead, the General Counsel alleged that the union unlawfully failed to permit the applicants to make copies of the hiring hall records which would include the requested hiring hall information. It is clear that the General Counsel was

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[11] The July 19th letter itself is insufficient because it did not set forth the major categories of the chargeable expenditures.

[12] See, e.g., Carpenters Local 35 (Construction Employers Assn.), 317 NLRB 18 (1995).

contemplating that the applicants would review the hiring hall records at the union hall.[13]

Of course, there are differences between Beck disclosures and hiring hall records in that Beck disclosures are usually not as voluminous as hiring hall records and Beck objectors, unlike hiring hall applicants, may not need to come into the union offices for other purposes.[14] However, we view the hiring hall cases, and Construction Employers Assn. in particular, as indicating that furnishing information does not necessarily mean mailing that information to the requesting party. There could, of course, be circumstances where offering objectors an opportunity to personally inspect the union's financial records at its offices would constitute a refusal to provide that information because of the burden of coming into the union's offices. In this case, however, there is no indication that the Charging Party objector cannot conveniently come into the Union's offices and inspect the records.[15] Consequently, we conclude, in light of the July 19th Letter and Construction Employers Assn., that the Union's offering Ashby a personal inspection of the required information at the Union's offices to supplement the letter was a reasonable provision of that information under Beck and California Saw.

Regarding the Union's financial disclosure itself which was provided to the Region, we conclude, in agreement with the Region, that the audited report sets forth the Union's major expenditures with sufficient specificity under

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[13] Id., at 20, where the Administrative Law Judge noted that the General Counsel was contending that the Charging Party wanted the "opportunity to go to the hall" and photocopy the hiring hall records. Also, the ALJ, at 23, stated that "a complete and accurate evaluation of hiring hall operations during a 6-month period requires review and comparison of a number of documents. In no sense can it be said that such an examination at Respondent's hiring hall, even with note taking allowed, is superior to [doing so from mechanically reproduced copies]...."

[14] We recognize that hiring hall applicants usually have to come into the union hiring hall to register for jobs.

[15] [*FOIA Exemption* 5

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California Saw. Although all Union expenditures charged nonmembers are claimed to be representational, the claimed representational expense of "Contributions" includes $650/year of arguably nonrepresentational expenses. We note, however, this claimed representational expense amounts to an utterly insignificant percentage of the Union's total expenditures of over $300,000. We have deemed such improper charges to be de minimis and not warranting issuance of complaint.[16]

Finally, we conclude in agreement with the Region that the Union's financial disclosure unlawfully fails to include a breakdown of the International's representational expenses. The General Counsel has taken the position that such disclosure is necessary so that objectors can make informed decisions on whether to challenge the allocation of per capita payments to affiliates of the Section 9(a) representative.[17] Moreover, the Board recently indicated that this is one of a Section 9(a) union's Beck obligations, which can be satisfied by providing at least summaries of its affiliates' major expenditures. See California Saw, supra, 320 NLRB No. 11, slip op. at 16-17. Here, since no supporting information regarding the Union's International's chargeable expenses was supplied, this deficiency in the disclosure is violative of Section 8(b)(1)(A).[18]

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[16] See, e.g., AFTRA Seattle (KOMO-TV), Case 19-CB-7840, Advice Memorandum dated January 29, 1996; UFCW Local 1001 (The Bon Marche), Case 19-CB-7799, Advice Memorandum dated October 13, 1995; St. Louis Newspaper Guild, Local 57 (St. Louis Post-Dispatch), Case 14-CB-3843, Advice Memorandum dated April 3, 1995.

[17] See St. Louis Post-Dispatch, 14-CB-8343, Advice Memorandum dated April 3, 1995, at 5, citing cases.

[18] The Union's July 19th letter to Ashby states that the Union is not charging nonmembers for the International's nonrepresentational expenses included in the Union's per capita payment to the International. However, the Union does not set forth in this letter or in the audit it furnished the Region information as to the International's expenditures for which it charges objectors. The Union is not obligated to explain further the nonrepresentational amount of the per capita payment which it does not include in nonmember dues because nonmembers

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don't pay that amount. However, the Union is obligated to set forth major categories of expenditures for which it charges nonmember-objectors so that they can determine whether to challenge those expenditures.